IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

MFA.No. 958 of 1996(F)

OPMV.731/1991 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PATHANAMTHITTA
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APPELLANTS/CLAIMANTS:

1.K.OMANA,CHUNDOTTU VEEDU,
NELLIMUGAL, MUNDAPPALLI.

2.O.BEENA,CHUNDOTTU VEEDU,
NELLIMUGAL, MUNDAPPALLI.

3.S.SHAJI,CHUNDOTTU VEEDU,
NELLIMUGAL, MUNDAPPALLI.

4.O.SHEEJA,CHUNDOTTU VEEDU,
NELLIMUGAL, MUNDAPPALLI.

5.DANIEL,CHUNDOTTU VEEDU,
NELLIMUGAL, MUNDAPPALLI.

BY ADV. SRI.GEORGE CHERIAN
SRI.K.JACOB MATHEW
SRI.VARGHESE P.THOMAS

RESPONDENTS/RESPONDENTS 1 TO 4:

1.SRI.CHANDI PHILIP,KOYTHODATHU VEEDU,
MANDAMARUTHI, PAZHAVANGADI, RANNI.

2.SRI.RAVEENDRAN,SASI MANGALAM, THODUVAKKADU,
EZHAMKULAM. (REMOVED)

M.F.A.NO.958/1996

3.SRI.OONNOONNY GEORGE,S/O.OONNUNNY MEETTINGALA HOUSE, THODUVAKKADU, EZHAMKULAM, ADOOR. (REMOVED)

4.SRI.MATHEW GEORGE, PEZHUMKATTIL PUTTEN VEETTIL, MEZHUVELI, KOZHENCHERRY TALUK. (REMOVED)

RESPONDENTS 2 TO 4 ARE REMOVED FROM THE PARTY ARRAY AT THE RISK OF THE APPELLANTS AS PER ORDER DATED 4.4.07 ON I.A.NO.2184/06.

BY ADV. SRI.A.M.THOMAS
SRI.P.KESAVAN NAIR FOR R1
SRI.K.G.CLEETUS FOR R1

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 25/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO.958 OF 1996 (F)

Dated this the 25th day of May, 2007

J U D G M E N T

KOSHY,J.

This is a petition filed by the claimants in O.P.(MV). No.731/1991 on the file of the Motor Accidents Claims Tribunal, Pathanamthitta. The husband of the 1st petitioner died in a motor accident while he was travelling in a jeep driven by the 2nd respondent. The jeep was capsized. 1st respondent was the registered owner. 2nd respondent was the driver and 3rd and 4th respondents are stated to be the transferee owners of the vehicle as 1st respondent transferred the vehicle before the incident. Tribunal on the basis of the evidence adduced found that accident occurred not because of the negligence of the 2nd respondent driver of the vehicle. There is no offending vehicle and the jeep was capsized accidentally. But Tribunal awarded Rs.50,000/- as compensation under Section 140 of the Motor Vehicles Act. Tribunal also awarded 12% interest from

the date of application till realisation. Application was filed in 1991 and award was passed in 1996. Now the petitioner in this case wants to enhance the compensation contending that in the absence of evidence 2nd respondent driver must be presumed to be negligent on the principle of 'res-ipsa-loquitur'. There is no irrebuttable presumption that whenever a vehicle is capsized, driver of the vehicle is negligent. In any event such a presumption cannot be taken against a person who is not in the party array. This appeal was admitted and notice was issued on 5.9.1996. Notice was not served on respondents 2 to 4. Notice to the 2nd respondent was returned with the postal endorsement 'not known'. (See endorsement on the file on 29.11.2000). I.A.No.2184/2006 was filed by the appellants to delete respondents 2 to 4 from the party array. It was allowed at the risk of the appellants by order dated 4.4.2007. Thus as per the request of the petitioner 2nd respondent's name was deleted from the party array at his risk. Names of alleged transferees of the vehicle, respondents 3 and 4, were also deleted. In the absence of the 2nd respondent driver of

vehicle and his alleged employer in the party array and without hearing him, we cannot attribute negligence on him. The evidence adduced also does not justify the findings against the 2nd respondent who is not in the party array in the appeal. We see no ground to interfere in the award passed and hence this appeal is dismissed.

J.B.KOSHY, JUDGE

K.P.BALACHANDRAN, JUDGE

prp

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO.958 OF 1996 (F)

J U D G M E N T

25th May, 2007